28

POINTS AND AUTHORITIES

This case involves a long-term Clark County School District ("CCSD") administrator, Plaintiff Rodriguez-Malfavon, who was demoted in 2011 after receiving two unsatisfactory annual evaluations in 2010 and 2011. Exh. 1 and 2. In granting in part and denying in part the Defendants' motion for summary judgment the Court ruled that there is a question of fact as to whether the first unsatisfactory evaluation was issued in retaliation for the Plaintiff engaging in protected activity. Thus the sole issue for the jury to decide is whether the 2010 evaluation was retaliatory or not.

Given the limited nature of the trial there is no need to introduce evidence and testimony concerning things which happened after the Plaintiff received the 2010 negative evaluation and asked the Defendant's counsel to stipulate to that limitation. Defense counsel rejected the stipulation and indicated they think the 2011 evaluation is relevant because the fact that it was also unsatisfactory is admissible to prove that the 2010 evaluation was issued legitimately and not in retaliation. To date, Defense counsel has provided no legal authority to support this position.

The two evaluations in question were given by two different individuals covering two different job assignments. The 2010 evaluation covered the Plaintiff's work performance in the purchasing department, the 2011 evaluation covered the Plaintiff's performance doing different duties at the AIS High School. Furthermore, the evaluations were issued by two different administrators. The Plaintiff rejects the Defendant's assertion that her unsatisfactory work performance in 2011 is admissible to prove that her work performance in 2010 was unsatisfactory.

Legal Argument

Rodriguez-Malfavon's 2011 annual evaluation is not relevant to the issue that the jury will decide in this trial - namely, whether her 2010 annual evaluation was issued in retaliation for her protected activity. Federal Rules of Evidence Rule 401 states:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

 The question presented here is whether the fact that a different administrator observing Rodriguez-Malfavon work at a different location and in a different job is relevant to prove that her previous administrator legitimately believed her work performance was unsatisfactory.

It is not clear under what basis the Defendant will try to assert that the 2011 evaluation is relevant. Assuming the Defendant believes that the fact that Rodriguez-Malfavon received a negative evaluation in 2011 shows that poor performance is a character trait, Rule 404(a) specifically provides that "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Rule 404(a) therefore precludes the admission of the 2011 evaluation.

If the Defendant is asserting that the 2011 evaluation is evidence of a "bad act," Rule 404(b) states that "[e]vidence of crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Thus Rule 404(b) also precludes admission of the 2011 evaluation.

Case 2:12-cv-01673-APG-PAL Document 76 Filed 08/26/16 Page 4 of 11

Neuren v. Adduci, Mastriani, Meeks & Schill, 43 F.3d 1507 (D.C.Cir.1995), is instructive and supports the Plaintiff's position. In that case, the plaintiff's employer sought to introduce evidence from previous employers to prove the plaintiff could not perform her job. The court held that Rules 404(a) and (b) both precluded that evidence. Likewise, here, Rules 404(a) and (b) should preclude the evidence of a subsequent job in this case. Accordingly, based on the Federal Rules of Evidence Rodriguez-Malfavon believes that her 2011 annual evaluation is not relevant and should be precluded from the trial. Dated this 26th day of August, 2016. //Richard Segerblom RICHARD SEGERBLOM 701 East Bridger Ave., Ste. 520 Las Vegas, NV 89101 Attorney for Plaintiff

EXHIBIT 1

9908---500007

CCF-7 Rev. 11/06

Clark County School District

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EMPLOYEE: I cartify that this report has been discussed with me. I understand my signature does not necessarily indicate agreement.

CCSD 4

Project	Elene Rodriguez-Martevon	Augusi	September	October	November	Dacember
1.1 KPIa-Individual	Mature Pack	Learn Testing Software for SAP	Cross-train Catalog toad	Lund RZ20 functions for 1 weak	Cross-train Cetalog load	Lead RZ20 lunctions for 1 week
1.1 KPtg-individual	Prepare for hittel Catalog Picture Load*	Catalog Ficture Load	Calabor Picture Load	Casalog Picture Load	Leed Enhancement Plan	Calsing Picture Load
1.2 Documentation	Learn and document to lay process at Purchashig Maktemenow	Learn and document I key probles a Rudhalang	Pytemny variance, and document this process at Pulchischy. Abilitanisco	Follow bid document process and put out a bid for Purchashig Maintenance	Leam and document 1 key process at Purchasing Maintenance	Lead Enhancement Plan Documentation and Implementation
2.1 Training	Parkins dess advence Excel 2007	Werk torilards: Purphishing Certification CPPB	Attend Bid Inhing class	Work towards Purchasing Certification GPPB	Work towards Purchashig Certification CPPB	Work towards Purchashing Cartification CPPB
Z. 1 Teshing	Lesd Reading Group Main office	Lesd Reading Group Maintenance Office w/Charle	Create "Soft Skill Training	Grasie Cantra Training	Teach "Soft Skill" Class for Administrators	Teach "Soli Skir" Class for Administrators
2.2 Skill Sels/Job Descriptions	Work with Kris to create Adentify certification training confiltention training	Work with Kris to create/Identify certification training program	Work with Kris to create/Gentity certification training program	Work with Kris to Creste/dentify certification training program	Work with Kris to create/dentity certification training program	Work with Kris to create/Identify confilmenton training program
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3.1 Internal Communication	Attend Teary Mosting and publish minited	Starnit dans les PVIAGE Compaction l'amont	Átteriffeen Meding end þúðleit tilhules	Submit data to PWING Consection News Letter	Allend Team Meeling and publish minutes	Submit data to PWMG Connaction Nava Latter
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3.3 External Communications	Set up supplier quariery fait	Held supplier fait	Attend Outreach/Chamber theathrg	Sat up supplier quarterly fair	Hold supplier fair	Altend Oldreach/Chamber meeting
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EXHIBIT 2

9998---500007

CCF-7

CCSD000290

Clark County School District

PERFORMANCE EVALUATION REPORT — CENTRAL OFFICE ADMINISTRATOR

	nployee Name: Elena Rodriguez-Malfa	•		epartment: AISHS	
Titl	le: Coordinator	Social Security N	lo. (last 4 digits):	Date	:
Yea	ars as Administrator: 9	Years in CCSD: 21	Page 1 of 2		
Ana	alysis of performance, completion of previo	ous directions, directions and	other factors wh	ich are perlinent to t	ne performance of a
pro	obationary/postprobationary administrator.				
Per	rformance Indicators/Analysis: (indica	tions of performance in relati	ion to astablish		
	The state of the s	Satisfac		ds Improvement*	Not Satisfactory*
	A. Assessment/Analysis/Planning		,		Not Satisfactory .
	B. Supervision and Evaluation		•	M	i i
	C. Leadership N.A.				Ħ
	D. Parent/Community Relations N. A.	9. \square		同	
	E. Organization and Management				M
	F. Intra-District Relations	\checkmark			Ħ
	G. Other: (i.e. professional responsibilit	ies, etc.)			$\overline{\square}$
*An SAT	ny area(s) marked "Needs Improvement" and/or TISFACTORY in any category results in an overal	"Not Satisfactory" require(s) furth I rating of Not Satisfactory.)	er documentation	and references. A peri	ormance rating of NOT
	Summary/Analysis of Performance (c	comments required regard	ess of rating).		•
	Please refer to page two.				
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		on promaing value as all	sommetrator.	This offective has	not been met.
	,				
•	Directions:				
	1. Focus on providing value as an a	dministrator			
	2. Comply with all directives, past ar	nd present.			
		•			
	I certify that I have supervised and evaluated th	ne professional performance of th	e above named [probationary 🗸	7
	employee, and I certify that to date this school	year the administrator's overall p	erformapce	is / is not satisfa	postprobationary
	Anita Wilbur	•	-//	7/1 1/	·
	PrintType Name of Successor.	AISHS Principal	Unit.	a Wille	us 06.06 6-22-1
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	A response was submitted on	_,			
	Date			or Receiving Response	Date
	EMPLOYEE: I certify that this report has been dis-	cussed with me. I understand my s	ignature does not n	ecessarily indicate agree	ment.
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9998-500010

CCF-10 (Rev. 09/09)

Clark County School District

PERSONNEL RECORD — CONTINUATION SHEET

Name: Elena Rodriguez-Malfavon	AND THE PROPERTY OF THE PROPER	Social Security No. (last 4 digits): 2413
CCF7	Date: 06/02/11	Page No: 2 of _2

- A. Assessment/Analysis /Planning Elena Rodriguez-Malfavon needs to demonstrate improvement in this area.

 Observations of staff and facilities management (i.e. shelter in place, fire keys distribution) were not completed in a timely manner, as evidenced by a disciplinary document dated May, 26, 2011.
- B. Supervision and Evaluation Elena Rodriguez-Malfavon is not satisfactory in this area. She was assigned the supervision and evaluations of support staff at the Academy for Individualized Study High School (AISHS). The registrar's evaluation was due on April 1, 2011. She had to be reminded by this supervisor to complete the support staff evaluation. The evaluation was issued 12 days late, due as of April 1, 2011, as stated in a disciplinary document dated May 26, 2011.
- C. Leadership; Not Applicable
- D. Parent/Community Relations: Not Applicable
- E. Organization and Management Elena Rodriguez-Malfavon is not satisfactory in this area, as evidenced by a disciplinary document she received dated May 26, 2011. As one part of her assigned duties dealing with the facility, Mrs. Rodriguez-Malfavon was assigned responsibility for ensuring that all employees have the required fire alarm keys. In checking, I discovered that no employee had been issued the required fire alarm key, which is an extremely serious matter.
- F. Intra-District Relations Elena Rodriguez-Malfavon is satisfactory in this area.
- G. Other Elena Rodriguez-Malfavon is not satisfactory in this area, as evidenced by the following concerns outlined in a disciplinary document dated May 26, 2011.

"On May 3, 2011 you logged into the AISHS attendance calendar and entered a departure time of 12:12 pm and a return time of 1:00 pm while at site #128 where you were to meet with Mr. Waldron, executive director of the Education Services Division. When I was in the same building, I noticed you still talking with the secretary at 1:15 pm. You never corrected your time on the attendance calendar. To date, the record has still not been corrected."

"On February 28, 2011, you were present for a training session on the usage of the time clock by every employee. Everyone, including you, were instructed that March 2011, would be a month of practice implementation, after which, it would be mandatory for all employees to begin using the computerized time clock effective April 1, 2011. You were advised that I would be reviewing the time clock records at the end of April, 2011, to ensure compliance. Only beginning on April 18, 2011 did you begin to use the time clock, 17 days after the mandated start time."

Print/Type Name of Supervising Administrator

Elena Rodriguez-Malfavon's overall performance is rated as not satisfactory.

Signature of Employee

0-21-11

Anita Wilbur

Signatui

06.06.11

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031 Distribution Original/White: Area Associate/Division Superintendent, then Human Resources Division
2™ Copy/Yellow Supervising Administrator - Work Location File 3™ Copy/Pink: Employee

CCSD

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2016, I served the foregoing Motion in Limine by ECF transmission to counsel for the Defendant.

//Richard Segerblom//
RICHARD SEGERBLOM, ESQ.
Attorney for Plaintiff